

**REMARKS**

Applicants request further examination and consideration in view of the remarks and amendments contained herein. The Specification has been amended. Claims 1-34 and 97-107 have been canceled. Those claims are part of division application Serial No. 10/831,945. Claims 35 and 47 have been amended. Claims 35-47 and 49-96 are pending in this application.

**Interview Summary**

Applicant thanks the Examiner for his time in the telephonic interview of July 14, 2008. Applicant and the Examiner discussed the objection to the specification and the rejection under 35 U.S.C. § 112, first paragraph. Applicant agreed to cancel the amendment to the specification made on January 7<sup>th</sup> and to amend claims 35 and 47 to recite a “remote device” instead of a “remote capture device”. The Examiner agreed that paragraph beginning on line 8 of page 24, as well as Figures 2 and 4, of the Specification as originally filed supports the recitation of a “remote device” in claims 35-47 and 49-84.

**Objection to the Specification**

The disclosure is objected to because the Examiner asserts that Applicants that the amendment of January 7, 2008 introduced new matter. Applicant has amended the specification to remove the matter added in the January 7<sup>th</sup> amendment. Applicant, therefore, respectfully requests that the objection to the specification be withdrawn.

**Rejection Under 35 U.S.C. § 112**

Claims 35-47 and 49-84 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirements. In view of the amendments to the specification described above, at least the paragraph beginning on line 8 of page 24, as well as Figures 2 and 4, and the interview of July 13<sup>th</sup>, Applicant believes that the term “remote device” is fully supported by the specification, and would ask the Examiner to withdraw the rejection under § 112, first paragraph.

**Rejection Under 353 U.S.C. § 102**

Claims 35-44, 47, 49-51 and 53-62 are rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 7,194,752 to Kenyon et al. (hereafter “Kenyon”).

It is well settled that to anticipate a claim, the reference must teach every element of the claim, see M.P.E.P. § 2131. Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he elements must be arranged as required by the claim,” see M.P.E.P. § 2131, citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim,” see M.P.E.P. § 2131, citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). Applicant respectfully asserts that the rejection does not satisfy these requirements.

Claim 35, as amended, requires directly receiving from the remote device a signal, the signal including a captured sample of the music broadcast. Claim 47, as amended, requires receiving a signal directly from the remote device, the signal including a captured sample of the music from the user; wherein the music is audible by the user and the captured sample includes a sample of the music.

As previously described, Kenyon does not describe at least these limitations. Instead Kenyon describes a Signal Recognition system that directly collects broadcast and satellite audio and video for identification. Interface subsystem 1 from Figure 1 and column 16, lines 14-28. Each recognition station includes one or more of the interface subsystems which accept broadcast sources that have signals to be identified. Column 16, lines 14-21. Enough interface systems could be employed at a particular station to monitor all broadcast and cable TV stations and all AM and FM radio stations within that city. Column 16, lines 24-27.

As Kenyon does not describe a remote device providing a signal, the signal including a captured sample, as required by claims 35 and 47, Kenyon does not describe each and every element of claims 35, 47. Claim 35, 47 are, therefore, not anticipated by Kenyon and allowable over the rejection of record.

In the Examiner's Response to Remarks section on page 16 of the present Office Action dated April 15, 2008 as well as the Office Action dated October 5, 2007, the Examiner only states that the amendments to Claims 35 and 47 are not allowable in view of the objection to the specification and the rejection under 35 U.S.C. § 112. Applicant has responded to those rejections above. As the Examiner has indicated that those are the only reasons for rejection of the independent claims 35 and 47, Applicant believes that claims 35 and 47 are now in condition for allowance, and respectfully requests such action by the Examiner.

Claims 36-44, 49-51 and 53-62 depend from one of claims 35 or 47 and, therefore, inherit all the limitations of their respective base claims. As the respective base claims are allowable for the reasons set forth above, Applicant respectfully asserts that claims 36-44, 49-51 and 53-62 are allowable over the rejection of record.

#### **Rejection Under 35 U.S.C. § 103**

Claims 45-46, 52 and 63-84 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenyon in view of Pocock (US Patent No. 5,661,787A) hereafter referred to as "Pocock."

Claims 45-46, 52 and 63-84 depend from one of claims 35 or 47 and, therefore, inherit all the limitations of their respective base claims. As the respective base claims are allowable for the reasons set forth above, Applicant respectfully asserts that claims 45-46, 52 and 63-84 are allowable over the rejection of record.

**CONCLUSION**

In view of the above, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 06-2380, under Order No. 69323/P002US/10511081 from which the undersigned is authorized to draw.

Dated: July 15, 2008

I hereby certify that this document is being transmitted to the Patent and Trademark Office via electronic filing.

Date of Transmission: July 15, 2008

Signature: Jan Cleveland  
(Jan Cleveland)

Respectfully submitted,

By Craig J. Cox  
Craig J. Cox  
Registration No.: 39,643  
FULBRIGHT & JAWORSKI L.L.P.  
2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201-2784  
(214) 855-7142  
(214) 855-8200 (Fax)  
Attorney for Applicant